

**REMARKS**

Claims 1-12 are pending in this application. By the Office Action, claims 1-5 are rejected under 35 U.S.C. §101, claims 6-10 are rejected on the ground of nonstatutory obviousness type double patenting, and claims 1-10 are rejected under 35 U.S.C. §103. By this Amendment, claims 1, 3-6, and 8-10 are amended to further clarify the subject matter being claimed, claims 11 and 12 have been added, and claims 2 and 7 have been cancelled without prejudice. Support for the amendments to the claims may be found, for example, in paragraph [0023] (support for the amendments to claims 1 and 6), paragraph [0027] (support for the amendments to claims 4 and 9), and paragraph [0051] (support for the amendments to claims 11 and 12) of the present specification. Thus, no new matter is added by the above amendments. In view of at least the following, reconsideration and allowance are respectfully requested.

**Double Patenting Rejection**

The Office Action provisionally rejects claims 1-5 under 35 U.S.C. §101 as allegedly claiming the same invention as claims 1-5 of U.S. Patent Application No. 10/579,055 (hereinafter the '055 application); and claim 6-10 on the ground of nonstatutory obviousness type double patenting over claims 6-10 of the '055 application. Without agreeing with or acquiescing to the rejection, Applicants note that claims 1-10 have been amended. In view of these amendments, Applicants submit that claims 1-5 of the '055 application are distinct from the claims 1-5 of the present application. Therefore, reconsideration and withdrawal of the statutory obviousness type double patenting rejection are respectfully requested.

In response to the nonstatutory obviousness type double patenting rejection, Applicants submit that this rejection is premature, as the scope of both the present claims and

the claims of the '055 application may significantly change during prosecution. Therefore, reconsideration and withdrawal or abeyance of the rejection are respectfully requested.

**Rejection under 35 U.S.C. § 103**

The Office Action rejects claims 1-10 under 35 U.S.C. §103(a) as being unpatentable over Koide et al. (JP Application No. 10-265373, hereinafter "Koide") in view of Uchiumi et al. (JP Application No. 10-279480, hereinafter "Uchiumi"). Applicants respectfully traverse the rejection.

Applicants note that neither Koide nor Uchiumi disclose, *inter alia*, the claimed aqueous base or the claimed rubber base, as recited in independent claims 1, 4, 6, and 9. Furthermore, neither Koide nor Uchiumi discloses the claimed range of percentages by mass of the claimed active ingredient, as recited in independent claims 1, 4, 6, and 9. Uchiumi discloses that the divided dose of a drug containing 3-methyl-1-phenyl-2-pyrazolin-5-one is either 1-100 (for one to three doses a day) or a divided dose of .01-50 mg (for two to five doses a day) (*see* Uchiumi, Abstract and paragraph [0012]). However, contrary to the Office Action's assertion that the compound comprises up to 50% of the composition, there is nothing in Uchiumi that discloses the percentage of mass for the drug in Uchiumi.

Based on the teachings and the aforementioned deficiencies of Koide and Uchiumi, Applicants submit that one skilled in the art would not have had proper guidance or reasons to arrive at the claimed combination of elements. Therefore, Applicants submit that Koide and Uchiumi (either alone or in any proper combination) fail to disclose or to have rendered obvious all of the elements of the claimed invention, as recited in the independent claims.

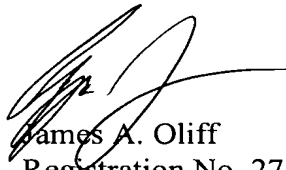
The cited references thus would not have rendered obvious the claimed invention. Reconsideration and withdrawal of the rejection are respectfully requested.

**Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of this application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

  
James A. Oliff  
Registration No. 27,075

Azza M. Jayaprakash  
Registration No. 55,299

JAO:AMJ/lbg

Date: February 13, 2009

**OLIFF & BERRIDGE, PLC**  
**P.O. Box 320850**  
**Alexandria, Virginia 22320-4850**  
**Telephone: (703) 836-6400**

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--